

Message Text

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DRAFTED BY: TRSY:OS:MDFIELD

APPROVED BY: EB/IFD/OMA:J. KRIZAY

TRSY:OS:NNGORDON

ARA/NC:M. FORRESTER

EB/IFD/OMA:M. MINNIES

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FM SECSTATE WASHDC

TO AMEMBASSY CARACAS

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: POSSIBLE ADVANTAGES OF AN INCOME TAX TREATY

A COPY OF THE US-USSR TAX TREATY IS BEING AIRPOUCHED ALONG WITH COPIES OF OTHER RECENT US INCOME TAX TREATIES WITH NORWAY AND ROMANIA. INCOME TAX CONVENTIONS ORDINARILY COVER A VARIETY OF ISSUES, INCLUDING THE TAX TREATMENT OF BUSINESS PROFITS AND INVESTMENT INCOME AS WELL AS PERSONAL SERVICE INCOME. THEY ALSO PROVIDE FOR RELIEF FROM DOUBLE TAXATION (ALTHOUGH ON OUR SIDE THE TREATY ONLY NEEDS TO CONFIRM THE FOREIGN TAX CREDIT AVAILABLE UNDER US LAW), NONDISCRIMINATION AND ADMINISTRATIVE COOPERATION. THE USSR TREATY IS SOMEWHAT UNUSUAL DUE TO THE LIMITED SCOPE OF ACTIVITIES WHICH FOREIGNERS CAN ENGAGE IN IN THE USSR. THE OTHER TWO TREATIES POUCHED ARE MORE TYPICAL. THE USSR AND THE ROMANIAN TREATIES HAVE NOT YET BEEN REVIEWED BY THE SENATE WHICH MUST APPROVE RATIFICATION OF ANY SUCH TAX TREATY.

THE USSR TREATY CONTAINS A GENERAL PROVISION THAT EACH COUNTRY WILL EXEMPT FROM TAX RESIDENTS OF THE OTHER COUNTRY WHO PERFORM PERSONAL SERVICES IN ITS TERRITORY DURING A PERIOD OF SIX MONTHS

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(183 DAYS) OR LESS DURING THE YEAR. A SIMILAR SIX-MONTH EXEMPTION

IS STANDARD IN OTHER US TREATIES AS A GENERAL RULE WITH RESPECT TO PERSONAL SERVICE INCOME, BUT IN RECENT TREATY NEGOTIATIONS THE OTHER COUNTRY HAS INSISTED ON MORE LIMITED EXEMPTION IN THE CASE OF ENTERTAINERS AND ATHLETES. DEVELOPING COUNTRIES ARE ESPECIALLY CONCERNED AT THE POTENTIAL REVENUE LOSS OF EXEMPTING SUCH PERSONS, WHO FREQUENTLY EARN LARGE SUMS DURING A BRIEF VISIT. CONSEQUENTLY, SEVERAL RECENT TREATIES (SEE THOSE WITH NORWAY AND ROMANIA) LIMIT THE EXEMPTION FOR ARTISTS, ENTERTAINERS AND ATHLETES TO THOSE WHO STAY NO LONGER THAN 90 DAYS AND EARN NO MORE THAN \$3,000, AT LEAST IN THE CASE OF SELF-EMPLOYED PERSONS.

EMBASSY SHOULD BE AWARE IN ASSESSING POSSIBLE GOV INTEREST IN AN INCOME TAX TREATY THAT US CANNOT PROVIDE A TAX INCENTIVE TO US TAXPAYERS WHO INVEST IN THE OTHER COUNTRY. DEVELOPING COUNTRIES TYPICALLY URGE THAT AN INDUSTRIAL COUNTRY PROVIDE IN A TAX TREATY EITHER EXEMPTION OF INCOME ARISING IN THE DEVELOPING COUNTRY OR A FICTITIOUS CREDIT ("TAX SPARING" CREDIT) FOR TAXES WHICH IT REDUCES OR WAIVES UNDER A TAX INCENTIVE PROGRAM. THE US SENATE HAS CONSISTENTLY REFUSED TO APPROVE ANY SUCH INCENTIVE IN AN INCOME TAX TREATY AND GOV SHOULD NOT BE ENCOURAGED TO BELIEVE THAT SUCH A PROVISION IS POSSIBLE AT THIS TIME. KISSINGER

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